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U.S. DISTRICT COURT
N.D. OF ALABAMA

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In the United States District Court
For the Northern District of Alabama

FORM FOR USE IN APPLICATION FOR
HABEAS CORPUS UNDER 28 U.S.C. § 2254

CIVIL ACTION NUMBER

CV-05-B-0301-NE

(To be supplied by the Clerk of the District Court)

KONDELL WRIGHT #227567

Full Name of Plaintiff-Petitioner

LIMESTONE CORR. Fac. 28779 NICK DAVIS Rd. Harvest,
Place of Confinement Al 35749

VS.

BILLY MITCHEM, et al

(Name of Warden, Superintendent, Jailer, or authorized
person having custody of petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF ALABAMA,

Respondents

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 USC § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A
PERSON IN STATE CUSTODY

INSTRUCTIONS -- READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Do not use this form unless you were convicted in one of the following counties: BIBB, BLOUNT, CALHOUN, CHEROKEE, CLAY, CLEBURN, COLBERT, CULLMAN, DeKALB, ETOWAH, FAYETTE, FRANKLIN, GREENE, JACKSON, JEFFERSON, LAMAR, LAUDERDALE, LAWRENCE, LIMESTONE, MADISON, MARION, MARSHALL, MORGAN, PICKENS, SHELBY, ST. CLAIR, SUMTER, TALLADEGA, TUSCALOOSA, WALKER, WINSTON.

- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, *the original and two copies* must be mailed to the Clerk of the United States District Court for the Northern District of Alabama, 104 Federal Courthouse, 1800 Fifth Avenue, North, Birmingham, Alabama 35203.
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION

1. Name and location of court which entered the judgment of conviction under attack
MONTGOMERY COUNTY CIRCUIT COURT
2. Date of judgment of conviction January 8, 2003
3. Length of sentence LIFE
4. Nature of offense involved (all counts) Felony Murder (Life) Conspiracy to commit Robbery (20) years Assault First degree (20) years
all CONCURRENT
5. What was your plea? (Check one)
 - (a) Not guilty ()
 - (b) Guilty (XXX)
 - (c) Nolo contendere ()

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: Nolle Pross counts I-Capitol Murder, IV-Robbery First degree, and V-Assault First degree.
6. Kind of trial: (Check one)
 - (a) Jury ()
 - (b) Judge only (XXX)
7. Did you testify at the trial?
Yes () No (XXX)

8. Did you appeal from the judgment of conviction?

Yes () No ~~(xxx)~~

9. If you did appeal, answer the following:

(a) Name of court _____ N/A

(b) Result _____ xxx

(c) Date of result _____ xxx

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes () No ~~(xxx)~~

11. If your answer to 10 was "yes," give the following information:

(a)(1) Name of court _____ N/A

(2) Nature of proceeding _____ xxx

(3) Grounds raised _____ xx xxx

_____ xxx

_____ xxx

_____ xx

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes () No ~~(xxx)~~

(5) Result _____ N/A

(6) Date of result _____ xxx

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____ N/A

(2) Nature of proceeding _____ xxx

(3) Grounds raised _____ xx

_____ xx

_____ xx

_____ xx

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes () No ~~(xxx)~~

(5) Result _____ N/A

(6) Date of result _____ xx

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____ N/A

(2) Nature of proceeding _____ xxx

(3) Grounds raised _____ xx

_____ xx

_____ xx

_____ xx

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes () No ~~(x)~~

(5)	Result	N/A	
(6)	Date of result	XX	
(d)	Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?		
	(1) First petition, etc	Yes ()	No ()
	(2) Second petition, etc	Yes ()	No ()
	(3) Third petition, etc	Yes ()	No ()
(e)	If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: N/A		
	XXX		
	XX		
	XXX		

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand jury or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one: THE COURT WAS WITHOUT JURISDICTION TO ACCEPT THE GUILTY PLEAS.

Supporting FACTS (tell your story *briefly* without citing cases or law):

I was indicted for Capitol Murder the trial court AMENDED THE INDICTMENT without first acquiring the proper jurisdiction whereas the basis of the Capitol Murder charge was split into various charges and or counts in one indictment and the court Dismissed some of the charges and allowed the petitioner to plead to the other charges. See EX-A attached

- B. Ground two: Denial of effective assistance of counsel

Supporting FACTS (tell your story *briefly* without citing cases or law):

My attorney allowed me to plead guilty to a (6) count Indictment that consisted of AMENDED offenses that was Statutorily Unauthorized in that he induced me to plead to Felony Murder from CAPITOL MURDER and allow the trial court to Split the said charges. See EX-B

- C. Ground three: N/A

Supporting FACTS (tell your story *briefly* without citing cases or law):

xxxx
xxx
xxx
xx

- D. Ground four: N/A

Supporting FACTS (tell your story *briefly* without citing cases or law):

xxx
xx
xx
xx
xx

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: N/A

xx
xx
xx

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes () No (xxx)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Not Sure

- (b) At arraignment and plea Not Sure
xxx
- (c) At trial xxx
xx
- (d) At sentencing xxx
xx
- (e) On appeal xx
xxx
- (f) In any post-conviction proceeding N/A
xx
- (g) On appeal from any adverse ruling in a post-conviction proceeding xxx
N/A
xxx

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes (xxx) No ()
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes () No (xxx)
- (a) If so, give name and location of court which imposed sentence to be served in the future: N/A
xxx
- (b) And give date and length of sentence to be served in the future: N/A
xxx
xx
- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes () No (xxx)

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 2/3/05 (Date)

Korelita Wright
Signature of Petitioner

State of Alabama Unified Judicial System		CASE ACTION SUMMARY CONTINUATION		Case Number CC-2002-325
Form C-7 Rev 2/79				
Style: <u>State vs. Candell Demond Wright</u> EX-A Page Number _____ of _____ Pages				
DATE	ACTIONS, JUDGMENTS, CASE NOTES			
1-8-03	Δ with attorneys appeared before the Court Pursuant to plea agreement, State's Motions to Nolle Pross Counts I, IV and V Granted. State's Motion to Amend Count II to Felony Murder (during robbery) GRANTED. Δ will plead to Count II as amended to Felony Murder and Count III - Conspiracy to Commit Robbery and Count VI - Assault First Degree. (See below) Eugene W. Reese			
1-2-03	Notice of Additional Discovery to Defendant			
1-8-03	The Defendant comes before the Court with Attorney of record. Δ pleads from not guilty to guilty of Count II - Felony Murder (during robbery); Count III - Conspiracy to Commit Robbery; and Count VI - Assault First Degree.			
✓	The Court on the Record fully explained to Defendant all Constitutional rights. The Court is convinced that Defendant came into the Court voluntarily and understands all Constitutional rights. Exhibit A is signed by by Defendant and the Record affirmatively shows colloquy between the Judge and Defendant as to Defendant's full and complete understanding as to Constitutional rights and as to all of the waivers that a guilty plea effects and the consequences thereof. Upon the conclusion of said colloquy the Court accepts the guilty plea and finds the Defendant guilty of <u>Count II - Felony Murder; Count III - Conspiracy to Commit Robbery; and Count VI - Assault I</u> . 2-13-03 DJG:00414 Eugene W. Reese			
✓	NFOA/NA			

EX B

State of Alabama Unified Judicial System	EXPLANATION OF RIGHTS AND PLEA OF GUILTY (Habitual Felony Offender — Circuit or District Court)	Case Number <u>CC-02-325</u> Count <u>2</u> (count #, if applicable)
Form CR-52 (front) Rev. 7/02		

IN THE Circuit COURT OF Montgomery, ALABAMA
(Circuit or District) (Name of County)

STATE OF ALABAMA v. Kondell Wright
Defendant

TO THE ABOVE-NAMED DEFENDANT: After the court was informed that you wish to enter a plea of guilty in this case, this is to inform you of your rights as a criminal defendant.

PENALTIES APPLICABLE TO YOUR CASE

You are charged with the crime of Capital Murder, which is a Class A Felony. The court has been informed that you desire to enter a plea of guilty to ☐ this offense or ☒ to the crime of Felony Murder, which is a Class A Felony. The sentencing range for the above crime(s) is set out below:

FELONY	
<u>Class A</u> (No)	Not less than ten (10) years and not more than ninety-nine (99) years imprisonment or life imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed \$20,000.
Class B	Not less than two (2) years and not more than twenty (20) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed \$10,000. For imprisonment not more than 3 years, confinement may be in county jail and sentence may include hard labor for county.
Class C	Not less than one (1) year and one (1) day and not more than ten (10) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed \$5,000. For imprisonment not more than 3 years, confinement may be in county jail and sentence may include hard labor for

You will also be ordered to pay the costs of court, which may include the fees of any appointed attorney, and restitution if there is any. You will also be ordered to pay an additional monetary penalty for the use and benefit of the Alabama Crime Victims Compensation Commission of not less than \$50 and not more than \$10,000 for each felony for which you are convicted.

As a reported habitual offender, you are further advised that the Alabama Habitual Offender Act Section 13A-5-9 Ala. Code 1975, as amended by Act 2000-759, provides the following enhanced punishment for anyone who has been previously convicted of one or more felonies and who then is convicted of a subsequent felony:

Prior Felonies This offense →	No Prior Felonies	One Prior Felony	Two Prior Felonies	Three + Prior Felonies
Class C Felony	1 Yr. & 1 Day — 10 Years In State Penitentiary Fine Up To \$5,000	2 — 20 Years In State Penitentiary Fine Up To \$10,000	10 — 99 Years or Life In State Penitentiary Fine Up To \$20,000	15 — 99 Years or Life In State Penitentiary Fine Up To \$20,000
Class B Felony	2 — 20 Years In State Penitentiary Fine Up To \$10,000	10 — 99 Years or Life In State Penitentiary Fine Up To \$20,000	15 — 99 Years or Life In State Penitentiary Fine Up To \$20,000	Mandatory Life Imprisonment or any term of not less than 20 years Fine Up To \$20,000
<u>Class A Felony</u> (No prior convictions for a Class A Felony) <u>KW</u>	10 — 99 Years or Life In State Penitentiary Fine Up To \$20,000	15 — 99 Years or Life In State Penitentiary Fine Up To \$20,000	Life imprisonment or Any Term Of Years Not Less Than 99 Fine Up To \$20,000	Mandatory Imprisonment For Life or Life Imprisonment Without Possibility of Parole Fine Up To \$20,000
Class A Felony (One or more prior convictions for any Class A Felony)	10 — 99 Years or Life In State Penitentiary Fine Up To \$20,000	15 — 99 Years or Life In State Penitentiary Fine Up To \$20,000	Life imprisonment or Any Term Of Years Not Less Than 99 Fine Up To \$20,000	Mandatory Imprisonment For Life Without Possibility of Parole Fine Up To \$20,000

This crime is also subject to the following enhancements or additional penalties as provided by law: (Provisions Checked Apply To Your Case)

☒ Enhanced Punishment For Use Of Firearm Or Deadly Weapon: Section 13A-5-6, Ala. Code 1975, provides for sentence enhancement where a "firearm or deadly weapon was used or attempted to be used in the commission of a felony." This section provides for the following punishment in such event: For the commission of a Class A Felony, a term of imprisonment of not less than 20 years; for the commission of a Class B or Class C Felony, a term of imprisonment of not less than 10 years;

☐ Enhanced Punishment for Drug Sale Near School: Section 13A-12-250, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public or private school, college, university or other educational institution, must be punished by an additional penalty of five years imprisonment in a state correctional facility for each violation. This period of imprisonment is mandatory and the punishment imposed shall not be suspended or probation granted.

☐ Enhanced Punishment for Drug Sale Near Housing Project: Section 13A-12-270, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public housing project owned by a housing authority must be punished by an additional penalty of five years' imprisonment in a state correctional facility for each violation. This period of imprisonment is mandatory and the punishment imposed shall not be suspended or probation granted.

☐ Enhanced Punishment For Sales Of Controlled Substance To Anyone Under 18: Section 13A-12-215, Ala. Code 1975, provides that anyone convicted of selling, furnishing, or giving away a controlled substance to one who has not yet attained the age of 18 years, shall be guilty of a Class A Felony and the punishment imposed shall not be suspended or probation granted.

☐ Drug Demand Reduction Assessment Act and Loss of Driving Privileges: Section 13A-12-281, Ala. Code 1975, provides that, if you are convicted of a violation of §13A-12-202 (criminal solicitation to commit controlled substance crime), 13A-12-203 (attempt to commit a controlled substance crime), 13A-12-204 (criminal conspiracy), 13A-12-211 (unlawful distribution of a controlled substance), 13A-12-212 (unlawful possession or receipt of a controlled substance), 13A-12-213 (unlawful possession of marijuana, 1st), 13A-12-215 (sale, furnishing, etc., of controlled substance by person over age

Original - Court File

Copy - Defendant

Copy - District Attorney

Copy - Defense Attorney